

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MALANJE PHEA,

No. 2:20-cv-00283 GGH P

Petitioner,

ORDER

THE PEOPLE OF THE STATE
OFCALIFORNIA,

Respondent.

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254. The matter was referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and Local Rule 302(c).

Motion to Amend Habeas Petition

On February 27, 2020, the Ninth Circuit Court of Appeals denied petitioner’s request for authorization to file a second or successive habeas petition as unnecessary based on petitioner’s currently pending habeas petition filed before this court. ECF No. 9. The Ninth Circuit cited Goodrum v. Busby, 824 F.3d 1188, 1194-95 (9th Cir. 2016), in support that petitioner’s “application for authorization to file a second or successive habeas petition should be construed as a motion to amend a pending first habeas petition.” ECF No. 9 at 1. Petitioner’s application,

1 along with petitioner's supplemental letter and memorandum, were subsequently transferred to
2 the undersigned for resolution. Id.

3 “[W]hen a pro se petitioner files a new [habeas] petition in the district court while an
4 earlier-filed petition is still pending, the district court must construe the new petition as a motion
5 to amend the pending petition rather than as an unauthorized second or successive petition.”
6 Goodrum, 824 F.3d at 1192 (citing Woods v. Carey, 525 F.3d 886, 887–90 (9th Cir. 2008)). In
7 Woods, 525 F.3d at 890, the Ninth Circuit “vacated the district court's order dismissing the new
8 petition and remanded for the court to exercise its discretion in deciding whether to permit
9 amendment under Federal Rule of Civil Procedure 15.” Goodrum, 824 F.3d at 1194.

10 A petition for writ of habeas corpus “may be amended or supplemented as provided in the
11 rules of procedure applicable to civil actions.” 28 U.S.C. § 2242; see also Rule 12 of the Rules
12 Governing § 2254 Cases (recognizing general applicability in habeas of rules of civil procedure).
13 Federal Rules of Civil Procedure Rule 15(a) provides that:

14 (1) A party may amend its pleading once as a matter of course within:
15 (A) 21 days after serving it, or
16 (B) if the pleading is one to which a responsive pleading is
17 required, 21 days after service of a responsive pleading or 21
18 days after service of a motion under Rule 12(b), (e), or (f),
whichever is earlier.
19 (2) In all other cases, a party may amend its pleading only with the
20 opposing party's written consent or the court's leave. The court
should freely give leave when justice so requires.

21 Here, as required by the Ninth Circuit in this case, the court will construe petitioner's
22 application for authorization to file a second or successive habeas petition as a motion to amend.
23 Because it has been more than twenty-one days since petitioner's habeas petition was filed, and
24 no responsive pleading or motion under Rule 12 has been served, petitioner may only amend his
25 petition with permission from the court. See Fed. R. Civ. P. 15(a).

26 Rule 15(a) is very liberal and leave to amend “shall be freely given
27 when justice so requires.” See Bowles v. Reade, 198 F.3d 752, 757
28 (9th Cir.1999). But a district court need not grant leave to amend
where the amendment: (1) prejudices the opposing party; (2) is
sought in bad faith; (3) produces an undue delay in litigation; or (4)

1 is futile. Id. at 758; Jackson v. Bank of Hawaii, 902 F.2d 1385, 1387
2 (9th Cir.1990).

3 AmerisourceBergen Corp. v. Dialysis W., Inc., 465 F.3d 946, 951 (9th Cir. 2006).

4 Petitioner submitted his application for leave to file a second or successive petition, a
5 memorandum, and supplemental briefing which all seek to include additional claims to
6 petitioner's original petition. See ECF Nos. 8, 10, 11. In his application, petitioner states newly
7 discovered evidence supports his newly raised claims. ECF No. 8 at 4. In considering the relevant
8 factors pursuant to AmerisourceBergen Corp., the Court finds a lack of prejudice, bad faith, undue
9 delay in litigation, or futility. Petitioner sought leave to amend a month after filing his original
10 petition. Although, respondents have been served, respondents have not appeared in this action
11 and granting petitioner leave to file a first amended petition will not prejudice respondent.
12 Accordingly, petitioner's motion to amend is granted.

13 Motion for Appointment of Counsel

14 Petitioner has requested the appointment of counsel. ECF No. 12. There currently exists
15 no absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105
16 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of
17 counsel at any stage of the case "if the interests of justice so require." See Rule 8(c), Fed. R.
18 Governing § 2254 Cases. In the present case, the court does not find that the interests of justice
19 would be served by the appointment of counsel at the present time.

20 Motion to Change Case Name

21 Additionally, petitioner requests to substitute the People of the State of California with the
22 current warden of Kern Valley State Prison, as respondent. ECF No. 13. "A petitioner for habeas
23 corpus relief must name the state officer having custody of him or her as the respondent to the
24 petition." Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994) (citing Rule
25 2(a), 28 U.S.C. foll. § 2254). However, because petitioner will be granted an opportunity to
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1 amend his habeas petition, wherein he may name the appropriate respondent, the undersigned will
2 deny petitioner's request as moot.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The court's deadlines set forth in its February 24, 2020 order (ECF No. 5) are hereby
5 vacated. If necessary, a scheduling order will be re-issued pending screening of petitioner's
6 amended habeas petition;

7 2. Petitioner's motion for appointment of counsel (ECF No. 12) is denied without
8 prejudice to a renewal of the motion at a later stage of the proceedings;

9 3. Petitioner's motion to change case name (ECF No. 13) is denied as moot;

10 4. Petitioner's motion to amend (ECF No. 8) is granted;

11 5. Petitioner is granted thirty days from the date of this order to file an amended
12 application for writ of habeas corpus;¹

13 6. Any amended petitioner must be filed on the form be filed on the form employed by
14 this court and must state all claims and prayers for relief on the form. It must bear the case
15 number assigned to this action and must bear the title "Amended Petition"; and

16 7. The Clerk of the Court is directed to send petitioner the court's form application for
17 writ of habeas corpus.

18 Dated: March 20, 2020

19 /s/ Gregory G. Hollows
20 UNITED STATES MAGISTRATE JUDGE

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¹ By setting this deadline the court is making no finding or representation that the petition is not
subject to dismissal as untimely.